IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BAYER HEALTHCARE AG, ALCON, INC. and ALCON MANUFACTURING, LTD.,	)	
Plaintiffs,	)	
v.	)	C. A. No. 06-234
TEVA PHARMACEUTICALS USA, INC.,	)	**REDACTED PUBLIC VERSION**
Defendant.	)	

STIPULATION AND ORDER

WHEREAS on November 28, 2007, the date agreed to by the parties for exchanging Rule 26(e) supplementations, defendant Teva Pharmaceuticals USA, Inc. ("Teva") served its supplemental response to Plaintiffs' Interrogatory No. 9; and

WHEREAS, Teva has asserted the following defenses with respect to U.S. Patent No. 6,716,830 ("the '830 patent"): (1) non-enablement, (2) failure to satisfy the best mode requirement, and (3) lack of written description (hereinafter "supplemented defenses"); and

WHEREAS, Plaintiffs Bayer HealthCare AG, Bayer Pharmaceutical Corporation, Alcon, Inc. and Alcon Manufacturing Ltd. object to Teva raising these defenses at this point in the litigation on the basis that Plaintiffs believe they are new defenses that were not timely raised in the litigation; and

WHEREAS, in order to avoid Plaintiffs filing a motion to strike Teva's supplemented defenses,

THE PARTIES hereby stipulate and agree as follows:

1. Plaintiffs will not object to Teva raising the supplemented defenses during the trial of this matter. None of Teva's experts will testify in support of the supplemented

defenses either in Teva's case in chief or in Teva's rebuttal case, except that nothing in this stipulation is intended to preclude Teva from introducing, in its rebuttal case, testimony from its expert Dr. Allen that otherwise constitutes permissible rebuttal testimony and is within the scope of the opinions disclosed in Dr. Allen's expert report.

2. Teva will not object to Plaintiffs' introduction of evidence in response to Teva's supplemented defenses, including both fact witness and expert testimony, on the basis that such evidence was not disclosed to Teva, except as provided herein. Plaintiffs will provide defendants with an interrogatory answer on the subject matter of any expert testimony concerning Teva's supplemented defenses on or before January 21, 2008, but Plaintiffs will not be required to prepare additional expert reports. Plaintiffs also will identify any additional witnesses who will testify concerning these defenses on or before January 21, 2008, and Teva will have the opportunity to conduct a short deposition of any witness not listed on Plaintiffs' List of Witnesses They Intend to Call at Trial, which was served on Teva on November 28, 2007. Teva will not be permitted to depose any expert witnesses who will testify in response to Teva's supplemented defenses. Plaintiffs agree that the expert witnesses who will testify in response to Teva's supplemented defenses will be those previously identified by Plaintiffs and deposed by Teva in this litigation. With respect to Teva's supplemented defenses, Plaintiffs shall not introduce into evidence at trial any document that was not produced to Teva prior to the date on which this stipulation is executed, assuming the document was in existence as of November 28, 2007 and was responsive to Teva's requests as modified by Plaintiffs' objections and any agreements between the parties. With respect to Teva's supplemented defenses, Plaintiffs will produce any documents not previously produced and on which Plaintiffs intend to rely at trial on or before January 21, 2008.

THE PARTIES further stipulate and agree as follows:

3. Without prejudice to Teva's position that evidence of commercial success is not relevant to its double patenting defense with respect to U.S. Patent No. 5,607,942, the parties stipulate that sales of Avelox® tablets, based on data produced to Teva, since 2000 have been as follows:

Year	2000	2001	2002	2003	2004	2005	2006	2007 (July 2006-June 2007)
Sales ($, in 000's)	[redacted]							

REDACTED

[Source: BL021-000118].

4. Without prejudice to Teva's position that evidence of commercial success is not relevant to its obviousness defense with respect to the '830 patent, the parties stipulate that sales of Vigamox®, based on data produced to Teva, since the second quarter of 2003 have been as follows:

Quarter	Q2, 2003	Q3, 2003	Q4, 2003	Q1, 2004	Q2, 2004	Q3, 2004	Q4, 2004
Sales ($, in 000's)	[redacted]						
Quarter:	Q1, 2005	Q2, 2005	Q3, 2005	Q4, 2005	Q1, 2006	Q2, 2006	Q3, 2006
Sales ($, in 000's)	[redacted]						
Quarter:	Q4, 2006	Q1, 2007	Q2, 2007	Q3, 2007			
Sales ($, in 000's)	[redacted]						

REDACTED

[Source: AL019-000072].

5. Except as explicitly provided herein, nothing in this stipulation shall preclude any party from presenting any evidence that otherwise would be admissible.

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Attorneys for Defendant Teva Pharmaceuticals USA, Inc.

SO ORDERED this _____ day of _____, 2008

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Honorable Sue L. Robinson
United States District Judge